

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	
CITY OF STORM LAKE	ADMINISTRATIVE CONSENT ORDER
NPDES Permit Discharge Authorization Number: 22949-22711	2014-WW- 14

TO: City of Storm Lake
P.O. Box 1086
Storm Lake, IA 50588

Phil Havens
Storm Lake City Attorney
716 Lake Avenue
Storm Lake, IA 50588

I. SUMMARY

The Iowa Department of Natural Resources (Department) and the City of Storm Lake (City) hereby agree to the following Administrative Consent Order (Order). The City agrees to cease all discharges of sediment to receiving water bodies, comply with all applicable conditions of NPDES General Permit No. 2, and pay an administrative penalty of \$7,000 to the Department. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Julie Sievers
Iowa Department of Natural Resources
1900 N. Grand Ave. Gateway Mall North
Spencer, Iowa 51301
Ph: 712/732-8350

Relating to legal requirements:

Aaron Brees, Attorney
Iowa Department of Natural Resources
Des Moines, Iowa 50319-0034
Ph: 515/281-5965
aaron.brees@dnr.iowa.gov

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 503219-0034

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II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorizes the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The Department and the City hereby agree to the following statement of facts:

1. The City of Storm Lake (City) hired various construction related contractors to undertake a project to install a sanitary sewer main along Highway 110 and along the west side of Storm Lake in Buena Vista County, Iowa during 2012-2014 (the Project). The Project was to be constructed subject to terms of National Pollutant Discharge Elimination System General Permit No. 2 (General Permit No.2) which includes requirements to develop, implement, and update a storm water pollution prevention plan (SWPPP).
2. On February 12, 2013, Department Environmental Specialist Senior Julie Sievers met with City Building Official Scott Olesen to discuss the Project. Construction at the Project was underway; however Ms. Sievers noted that there were no erosion control measures in place as required by the SWPPP. Mr. Olesen stated the City was working with its project inspectors from Veenstra & Kimm, Inc. (V&K) to have construction contractor J&K Contracting L.L.C. (J&K) install the erosion control measures.
3. On February 13, 2013, the Department received an anonymous complaint concerning the lack of storm water controls at the Project. Ms. Sievers contacted City Water Quality Manager Doug Rainforth as Mr. Olesen was not available. Mr. Rainforth was aware of the situation and stated he would follow up with Mr. Olesen, V&K, and J&K. The following day, Mr. Rainforth sent Ms. Sievers an email updating her on the situation.
4. On February 14, 2013, the Department received a second complaint regarding erosion control at the Project through Buena Vista County Sanitarian Kim Johnson, which included photographs of the Project area. Ms. Sievers discussed the complaint with Mr. Olesen.
5. On February 15, 2013, Ms. Sievers met on site with Mr. Olesen, Matt Cruse of V&K, and a representative from Perficut Companies, Inc. dba Storm Water Consultants (SWC). Options for erosion control measures were discussed, as frozen ground now prohibited installation of silt fencing as required by the SWPPP. SWC placed waddles at the Project, agreed to update the SWPPP by February 18, 2013, and install erosion control

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measures as soon as possible. Mr. Olesen provided Ms. Sievers with an email summarizing this meeting.

6. On February 18, 2013, Mr. Olesen contacted SWC as the SWPPP update had not been received. SWC informed Mr. Olesen that SWC had directed J&K to install rock check dams at the Project. Mr. Olesen informed Ms. Sievers that the rock check dams were being installed.

7. On February 20, 2013, Ms. Sievers met with Mr. Olesen, Mr. Cruse, and a representative of J&K on site to review the erosion control measures that had been installed that week.

8. On March 7, 2013, Ms. Sievers was copied on an email from Mr. Olesen to John Mozena of V&K regarding the need for additional erosion control measures due to runoff from snow melt. In addition, rain was forecast for the area and Mr. Olesen requested that V&K ensure that measures were properly in place. Mr. Olesen later followed up with an email stating that Matt Runge of J&K had informed him that additional erosion control measures would be installed.

9. On April 8, 2013, Ms. Sievers visited the Project with Mr. Olesen and Mr. Mozena. Mr. Olesen followed up the visit with an email summarizing actions needed. Ms. Sievers visited the Project on April 16, 19, and 24, 2013 to observe the erosion control measures, and found them to be functioning properly under the conditions at those times.

10. On May 26-27, 2013, the Project area received 9-11 inches of rain. Ms. Sievers visited the Project on May 27, 2013 and found that due to the large amount of rain, the erosion control measures had been inundated. Ms. Sievers then visited with Mr. Olesen about the site conditions and discussed needed repairs.

11. On May 31, 2013, Ms. Sievers again discussed the Project with Mr. Olesen. No action had been taken at this time to repair the damaged erosion control measures following the May 26-27 rain event. Mr. Olesen then sent an email to V&K, J&K, and SWC regarding the need for repairs.

12. On June 3, 2013, the Department received an anonymous complaint that a contractor working on the Project was pumping dirty water into Storm Lake along Casino Road. Ms. Sievers contacted Mr. Olesen and conducted an investigation. She observed that J&K had dewatered the pipe trench running parallel to Casino Road without appropriate erosion controls in place. Sediment-laden water was entering an intake and flowing into Storm Lake. J&K was no longer pumping water upon Ms. Sievers' arrival; however sediment-laden water was still ponded around and flowing into the intake. Mr. Olesen, Mr. Cruse, and Mr. Mozena arrived and directed J&K to create earthen berms around the intakes to slow the flow of water. Mr. Olesen verbally ordered J&K to stop work and followed up with a written stop work order later in the day.

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13. Later on June 3, 2013, Mr. Olesen and Mr. Runge provided an email from Tim Huckaby of SWC, outlining erosion control plans for the site, sent prior to the complaint. Addition email correspondence between the parties raised the issue of whether the sediment that was discharged into Storm Lake actually came from the Project site. Ms. Sievers provided photo documentation of the incident to Mr. Runge and Mr. Huckaby, who then both agreed that the discharge did originate from the Project site.

14. On June 4, 2013, Ms. Sievers met with City of Storm Lake Code Enforcement Officer Bob Swanson, Mr. Mozena, Mr. Cruse, and Mr. Huckaby to discuss what erosion control measures were needed to prevent another discharge to Storm Lake. A detention basin was then constructed at the Project site, and during a June 12, 2013 visit by Ms. Sievers and Mr. Olesen, it appeared to be functioning properly.

15. No additional violations were noted through August 2014 as the Project neared completion.

IV. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Environmental Protection Commission (Commission) has adopted federal regulations pertaining to the issuance of NPDES permits for storm water discharge at 567 IAC 60.2 and 567 IAC 64.

2. Subrule 60.2 defines "Storm water" as "storm water runoff, snow melt runoff and surface runoff and drainage." It defines "Storm water discharge associated with industrial activity" to cover "the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant." Number 10 under this definition specifically encompasses "construction activity including clearing, grading and excavation activities."

3. Subrule 64.4(2) provides that the Director may issue general permits that are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for storm water point sources which require an NPDES permit under Section 402(p) of the Clean Water Act and 40 CFR 122.26. The NPDES General Permit No. 2 is such a permit.

4. General Permit No. 2, Part IV, requires the permittee to develop and implement a SWPPP in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. The SWPPP must include a description of all sediment and erosion control measures to be implemented. The permittee is required to develop the SWPPP and implement relevant provisions prior to construction as a

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condition of General Permit No. 2. The City failed to implement the SWPPP prior to beginning construction activities in violation of the terms of General Permit No. 2.

5. Additionally, the City failed to comply with the terms of the SWPPP by not repairing erosion control measures in a timely manner following the May 26-27 rain event. This is a violation of the terms of General Permit No. 2.

6. General Permit No. 2, Part IV, requires the permittee to amend the SWPPP in the event that site conditions change or the planned storm water control measures prove to be ineffective. The City failed to amend the SWPPP in a timely manner as detailed in the Statement of Facts. This is a violation of the terms of General Permit No. 2.

7. 567 IAC 64.3(1) provides that no one shall operate a wastewater disposal system "...without, or contrary to any condition of, an operation permit issued by the director." General Permit No. 2 is "an operation permit issued by the director." The City's violations of the provisions of this permit are therefore violations of Subrule 64.3(1).

V. ORDER

THEREFORE, the Department hereby orders and the City agrees to the following:

1. The City shall pay to the order of the Department an administrative penalty of \$7,000 within 30 days of receipt of this Order.
2. The City shall ensure there are no additional discharges of sediment to receiving water bodies.
3. The City shall comply with all conditions of NPDES General Permit No. 2.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty.

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ECONOMIC BENEFIT: It is unclear that any economic benefit was gained through these violations. As such, no penalty is assessed for this factor.

GRAVITY: The City's failure to implement the SWPPP prior to construction and failure to properly manage storm water from the Project are serious violations which led to discharge of sediment to Storm Lake. The discharge of sediment to waters of the state degrades water quality, harms aquatic life, and prevents the attainment of state water quality goals. Close adherence to a SWPPP is especially important at this Project given its close proximity to Storm Lake. Due to the significant impact of these violations, \$1,100 is assessed per violation for this factor.

CULPABILITY: The City was aware of the requirements of NPDES General Permit No. 2 and Project requirements were frequently discussed with Department staff. Given the proximity of the Project to a highly valued natural lake, the City has an increased obligation to be aware of and comply with all relevant permit requirements. As such, \$1,000 is assessed per violation for this factor.

AGGRAVATING FACTORS: The City, through the Lake Improvement Commission, and the Department are engaged in a major lake restoration project to remove sediment from Storm Lake. Discharge of sediment to the lake through inadequate storm water management has a direct, negative effect on these efforts. An additional \$700 is assessed for this factor.

Three violations are assessed a penalty of \$2,100 each, plus the \$700 aggravating factor, for a total penalty calculation of \$7,000.

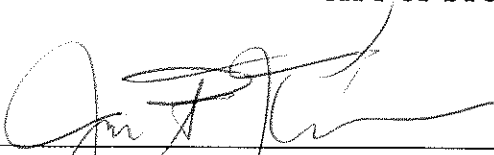
VII. WAIVER OF APPEAL RIGHTS

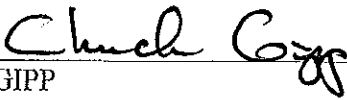
Iowa Code section 455B.175, and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of the City. By signing this Order all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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Dated this 30th day of November, 2014


CHUCK GIPP
DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 12th day of November, 2014